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99-899

Supreme Court, U.S.
FILED
FEB 28 2000
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JESUS NINO
P.O.BOX 1906
TEHACHAPI, CA. 93581
CALIFORNIA CORR. INST.
IVB-1A-102
C.D.C.# E-95209

MAR 17 PAGE 1

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MAR 15 2000

Mtn. + IFP affidavit attached

UNITED STATES SUPREME COURT

GEORGE GALAZA, WARDEN;
ATTORNEY GENERAL OF THE
STATE OF CALIFORNIA,
PETITIONERS,

V.

JESUS NINO,
RESPONDANT

ANSWER TO PETITION FOR WRIT
OF CERTIORARI
OCTOBER TERM, 2000
"BRIEF IN OPPOSITION"
NO. 98-55563
D.C. NO.CV-97-6831-WDK
U.S. SUPREME COURT NO. 99-899

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SUPREME COURT, U.S.

Petitioner, a state prisoner, proceeding in pro se in the above entitled matter, humbly requests that this court not hold petitioner in compliance with the technical necessities of pleading drafted lawyers.

(Sanders v. United States, (1963) 373 U.S. 1,22, 10 L. Ed.2d. 148,): (Hanes v. Kerner 404 U.S. 519, 92 S. Ct. 594); Which states, pro se pleadings be held to less stringent standards than those prepaired by counsel.

COURT PAPER
STATE OF CALIFORNIA
STD 113 (REV 3-95)
S 2839

The mendacious reasoning that a denial in a district court cannot be the basis of a §2253(c) motion is a misapplication of the totality of the circumstances, as we must base our decision on the real point in issue, the assertion a state prisoner was sentenced contrary to law, thus unauthorized by statute and Constitutionally defective.

In allowing a court an unappealable venue under the guise the unitary issue is not a Constitutional one distorts the fundamentally fair process and integrity of our judicial system, thus abrogating Due Process of Law.

The Attorney General asserts a multitude of hypothetical scenarios in application rather than relying on the factual historical record of the instant case. (pg.15) The petitioner asserts a state prisoner can easily frustrate Congress' intent of the AEDPA's one year limitation period, codified in 28 U.S.C. §2244(d)(2), through continously filing unmertitorious petitions, that are time consuming. Suffice it to say, assuming arguendo a state prisoner wishes to do such, a new petition can be filed the day a proceding petition was denied essentially tolling forever.

Any change in the word "pending" wouldn't alter the multifarious scenarios the Attorney General contends in attempting to sway the reviewing court Congress' intent is being circumvented.

Conversely the Attorney General negates to acknowledge state requirements for filing a petition of writ of habeas corpus from a denial of a preceding one, essentially wanting us to believe it is an indifinite period of time.(pg.14-16)

The Attorney General asserts a properly filed petition is only "pending" while it is under submission, and during the intermitent times a properly filed petition is not filed the time period is not tolled. While citing several United States Supreme Court holdings, petitioner fails to realize

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simply stated if Co ess intended such an applicati they would have done so expressly, in the language the Attorney General now asserts to be their intent.

An intent that finds no expression in the words of a statute cannot be found to exist. Courts may not speculate that the Congress meant something other than what they said. Nor, may they rewrite a statute to make it express an intention not expressed therein.

The United States Supreme Court has well established; "Under our Constitutional framework, Federal Courts do not sit as councils of revision to rewrite legislation in accord with our conception of prudent public policy. See United States v. Rutherford, (1978) 442 U.S. 544,555,[61 L Ed 2d 68,78],99 S Ct. 2470,2477].

Respondant incorporates and adopts the United States Ninth Circuit Court of Appeals holding correlative to the instant case. [No. 98-55563, filed July 6,1999]

Respondant concurs with the United States Ninth,Tenth and Eleventh Circuits as their opinions are all in accord with respondant. Respondant compels the reviewing court dismiss petitioner's petition for writ of Certiorari, with prejudice.

Respectfully Submitted,

January 31 2000
date

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E OF CALIFORNIA
113 (REV 3-95)
98 10024

No. 99-899

IN THE

SUPREME COURT OF THE UNITED STATES

GEORGE M. GALAZA, WARDEN, ATTOTNEY GENERAL, — PETITIONER
(Your Name)

VS.

JESUS NINO, — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached ~~petition for a writ of certiorari~~ Cert application without prepayment of costs and to proceed *in forma pauperis*.

[X] Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

UNITED STATES DISTRICT COURT-CENTRAL DISTRICT OF CALIFORNIA:CASE# CV-97-6831- WDK,
UNITED STATES NINTH CIRCUIT OF APPEALS:CASE# 98-55563.(SEE EXHIBIT A)

[ ] Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

Petitioner's affidavit or declaration in support of this motion is attached hereto.

(Signature)

AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

I, JESUS NINO, RESPONDANT, am the ~~petitioner~~ in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	**Average monthly amount during the past 12 months**		**Amount expected next month**	
	You	Spouse	You	Spouse
Employment	$ 0	$ N/A	$ 0	$ N/A
Self-employment	$ 0	$ N/A	$ 0	$ N/A
Income from real property (such as rental income)	$ 0	$ N/A	$ 0	$ N/A
Interest and dividends	$ 0	$ N/A	$ 0	$ N/A
Gifts	$?	$ N/A	$ 0	$ N/A
Alimony	$ 0	$ N/A	$ 0	$ N/A
Child Support	$ 0	$ N/A	$ 0	$ N/A
Retirement (such as social security, pensions, annuities, insurance)	$ 0	$ N/A	$ 0	$ N/A
Disability (such as social security, insurance payments)	$ 0	$ N/A	$ 0	$ N/A
Unemployment payments	$ 0	$ N/A	$ 0	$ N/A
Public-assistance (such as welfare)	$ 0	$ N/A	$ 0	$ N/A
Other (specify):	$ 0	$ N/A	$ 0	$ N/A
Total monthly income:	$ 0	$ 0	$ 0	$ 0

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
I'M INCARCERATED	P.O. BOX 1906		$ 0
			$
			$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
I'M NOT MARRIED			$
			$
			$

4. How much cash do you and your spouse have? $ 0
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial institution	Type of account	Amount you have	Amount your spouse has
		$	$
		$	$
		$	$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☐ Home
Value

☐ Other real estate
Value

☐ Motor Vehicle #1
Year, make & model
Value

☐ Motor Vehicle #2
Year, make & model
Value

☐ Other assets
Description I HAVE NO ASSETS!
Value

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
NONE	$ 0	$ 0
	$	$
	$	$

7. State the persons who rely on you or your spouse for support.

Name	Relationship	Age
NONE		

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home) Are real estate taxes included? ☐ yes ☐ no Is property insurance included? ☐ yes ☐ no	$ 0	$ 0
Utilities (electricity, heating fuel, water, sewer, and telephone)	$ 0	$ 0
Home maintenance (repairs and upkeep)	$ 0	$ 0
Food	$ 0	$ 0
Clothing	$ 0	$ 0
Laundry and dry-cleaning	$ 0	$ 0
Medical and dental expenses	$ 0	$ 0

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ yes ☒ no If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? yes no

APPARENTLY I'M PRO SE.

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid – or will you be paying – anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ yes ☒ no

If yes, how much? _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

I'M CURRENTLY INCARCERATED AND I AM THE RESPONDANT IN THE INSTANT ACTION, THUS IN A QUANDARY TO THE COURT'S REQUESTS.

THIS MOTION TO PROCEED "IN FORMA PAUPERIS" IS SUBMITTED CORRELATIVE TO RULE 39(2).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: FEBRUARY 25, 2000

(Signature)

	You	Your spouse
Transportation (not including motor vehicle payments)	$ 0	$ 0
Recreation, entertainment, newspapers, magazines, etc.	$ 0	$ 0
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	$ 0	$ 0
Life	$ 0	$ 0
Health	$ 0	$ 0
Motor Vehicle	$ 0	$ 0
Other:_____	$ 0	$ 0
Taxes (not deducted from wages or included in mortgage payments) (specify):_____	$ 0	$ 0
Installment payments		
Motor Vehicle	$ 0	$ 0
Credit card(s)	$ 0	$ 0
Department store(s)	$ 0	$ 0
Other:_____	$ 0	$ 0
Alimony, maintenance, and support paid to others	$ 0	$ 0
Regular expenses for operation of business, profession, or farm (attach detailed statement)	$ 0	$ 0
Other (specify):_____	$	$
Total monthly expenses:	$ 0	$ 0

EXHIBIT
" A "

NINO JESUS

(Petitioner)

GEORGE GALAZA, Warden.

(Respondent[s])

DECLARATION IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS

I, NINO JESUS, declare that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

1. Are you presently employed? Yes_____ No XX

a. If the answer is yes, state the amount of your salary or wages per month, and give the name and address of your employer.

b. If the answer is no, state the date of last employment and the amount of the salary and wages per month which you received.

Have you received, within the past twelve months, any money from any of the following sources?

a. Business, profession or form of self-employment? Yes ___ No XX
b. Rent payments, interest or dividends? Yes ___ No XX
c. Pensions, annuities or life insurance payments? Yes ___ No XX
d. Gifts or inheritances? Yes ___ No XX
e. Any other sources? Yes ___ No XX

If the answer to any of the above is yes, describe each source of money and state the amount received from each during the past twelve months.

2. Do you own any cash, or do you have money in a checking or savings account? Yes ___ No XX
(Include any funds in prison accounts)

If the answer is yes, state the total value of the items owned.

3. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? Yes ___ No XX

If the answer is yes, describe the property and state its approximate value.

List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support.

I, declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct. Executed on Sept. 2, 1997 (Date)

Signature of Petitioner

CERTIFICATE

I hereby certify that the Petitioner herein has the sum of $ 3.98 on account to his credit at the Corcoran institution where he is confined. I further certify that Petitioner likewise has the following securities to his credit according to the records of said Corcoran institution:

DATED Sept 2, 1997

Karen Smith
Authorized Officer of Institution

CC II
Title of Officer

PROOF OF SERVICE BY UNITED STATES MAIL
(§§ 445, 1013a, 2015.5 C.C.P.)

STATE OF CALIFORNIA)
)
COUNTY OF KERN)

I, the undersigned, declare that I am a resident of the aforesaid county, State of California; I am over the age of eighteen years and not a party to the within action; My address is: P.O. BOX 1906, TEHACHAPI, CA. 93581, CALIFORNIA CORRECTIONAL INSTITUTION

On the belowstated date I served documents described as follows:

MOTION TO PROCEED "IN FORMA PAUPERIS" AND BRIEF IN OPPOSITION

on the Interstate parties in this action by placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Tehachapi, California, addressed as follows:

UNITED STATES SUPREME COURT
WASHINGTON, D.C. 20543-0001
ATTN; CLERK OF THE COURT

ATTORNEY GENERAL
300 S. SPRING ST.
LOS ANGELES, CA. 90013
ATTN; DAVID ANDREW ELDRIDGE

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 27 day of
FEBRUARY 27, 2000.

Signature of Declarent
KENNETH COOPER
Printed Name of Declarent

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